



February 23, 2005

HOUSE BILL No. 1660

DIGEST OF HB 1660 (Updated February 22, 2005 6:06 pm - DI 101)

Citations Affected: IC 23-2; IC 25-11; IC 27-1; IC 27-4.

Synopsis: Securities division. Makes various amendments to the law concerning securities regulation. Changes the time that an application for registration by coordination automatically becomes effective from ten days to 30 days. Provides that if an Indiana office of a registered broker-dealer submits a compliance report indicating material noncompliance with Indiana securities laws, the securities division may conduct a follow-up examination to examine the areas of noncompliance identified in the report. Changes the requirements for certain exemptions from registration. Provides that: (1) enforcement attorneys and prosecution assistance unit attorneys are members of the enforcement department of the securities division; (2) employees of the securities division may disclose information to other law enforcement agencies; (3) a person who violates the securities law and has not filed a consent with the secretary of state is considered to appoint the secretary of state as an agent for service of process concerning noncriminal actions or proceedings against the person; (4) the securities commissioner may adopt rules and issue orders regarding service of process for nonregistered persons; (5) the securities commissioner shall determine the amount of a bond for an appeal; (6) an appellant shall pay costs associated with the certifying and delivering of transcripts; and (7) a court may consider only issues of law for an appeal of an order by the securities commissioner. Provides that it is an unfair and deceptive act or practice for an insurance producer or an insurer to recommend to a senior consumer the purchase or exchange of an annuity that results in another transaction unsuitable for the consumer on the basis of the consumer's: (1) investments and other insurance products; and (2) financial situation and needs. Allows the commissioner of the department of insurance (the "commissioner") to conduct investigations and enforce actions to ensure compliance with state laws and rules concerning the sale of variable annuity contracts. Allows the commissioner to consult with the securities commissioner and use the resources of the securities commissioner in making a final determination concerning compliance.

Effective: July 1, 2005.

Messer, Ruppel

January 19, 2005, read first time and referred to Committee on Financial Institutions.
February 22, 2005, amended, reported — Do Pass.

HB 1660—LS 7507/DI 110+



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February 23, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1660

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, unless
3 the context otherwise requires:

4 (a) "Commissioner" means the securities commissioner provided for
5 in section 15(a) of this chapter.

6 (b) "Agent" means an individual, other than a broker-dealer, who
7 represents a broker-dealer or issuer in effecting or attempting to effect
8 purchases or sales of securities. A partner, officer, or director of a
9 broker-dealer or issuer or a person occupying a similar status or
10 performing similar functions is an agent only if the person effects or
11 attempts to effect a purchase or sale of securities in Indiana. "Agent"
12 does not include an individual who represents an issuer in:

13 (1) effecting transactions in a security exempted by section
14 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(6), 2(a)(7), or 2(a)(10) of this
15 chapter;

16 (2) effecting transactions exempted by section 2(b) of this
17 chapter;

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(3) effecting transactions with existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting a person in Indiana; or

(4) effecting transactions in Indiana limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o).

(c) "Broker-dealer" means a person engaged in the business of effecting offers, sales, or purchases of securities for the account of others or for the person's own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer with respect to the offer or sale of the issuer's own securities;

(3) a bank, savings institution, or trust company; or

(4) a person who has no place of business in Indiana if the person effects transactions in Indiana exclusively with:

(i) the issuers of the securities involved in the transactions;

(ii) other broker-dealers; or

(iii) banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the Investment Company Act of 1940, as in effect on December 31, 1990), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, whether or not the offeror or any of the offerees is then present in Indiana.

(d) "Fraud", "fraudulent", "deceit", and "defraud" mean a misrepresentation of a material fact, a promise or representation or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of those terms as applied by or defined in courts of law or equity. These terms are not limited to common law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(f) "Issuer" means a person who issues or proposes to issue a security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or person performing similar functions or of the fixed, restricted management, or unit type. The term "issuer" means the

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1 person or persons performing the acts and assuming the duties of
 2 depository or manager pursuant to the provisions of the trust or other
 3 agreement or instrument under which the security is issued.

4 (g) "Nonissuer" means not directly or indirectly for the benefit of the
 5 issuer.

6 (h) "Person" means an individual, a corporation, a limited liability
 7 company, a partnership, an association, a joint-stock company, a trust
 8 where the interests of the beneficiaries are evidenced by a security, an
 9 unincorporated organization, a government, or a political subdivision
 10 of a government.

11 (i)(1) "Sale" or "sell" means a contract of sale of, contract to sell, or
 12 disposition of, a security, or interest in a security for value.

13 (2) "Offer" or "offer to sell" means an attempt or offer to dispose of,
 14 or solicitation of an offer to purchase, a security, or interest in a
 15 security for value.

16 (3) "Transaction" and "transactions" include the meanings of "sale",
 17 "sell", "offer", "offer to sell", and "purchase".

18 (4) "Purchase" means an acquisition, direct or indirect, of a security
 19 or an interest in a security for value.

20 (5) A security given or delivered with, or as a bonus on account of,
 21 a purchase of securities or any other thing is considered to constitute
 22 part of the subject of the purchase and to have been offered and sold for
 23 value.

24 (6) A purported gift of assessable stock is considered to involve an
 25 offer and sale.

26 (7) A sale or offer of a warrant or right to purchase or subscribe to
 27 another security of the same or another issuer, as well as a sale or offer
 28 of a security that gives the holder a present or future right or privilege
 29 to convert into another security of the same or another issuer, is
 30 considered to include an offer of the other security.

31 (8) The terms defined in this subsection do not include:

32 (i) a bona fide secured transaction in or loan of outstanding
 33 securities;

34 (ii) a stock dividend, whether the corporation distributing the
 35 dividend is the issuer of the stock or not, if nothing of value is
 36 given by the stockholders for the dividend other than the
 37 surrender of a right to a cash or property dividend when each
 38 stockholder may elect to take the dividend in cash or property or
 39 in stock; or

40 (iii) an act incident to a judicially approved reorganization in
 41 which a security is issued in exchange for one (1) or more
 42 outstanding securities, claims, or property interests, or partly in

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such exchange and partly for cash.

(j) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names, as in effect on December 31, 1990.

(k) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, an interest in a limited liability company or limited liability partnership, ~~and~~ any class or series of an interest in a limited liability company or limited liability partnership (including any fractional or other interest in an interest in a limited liability company or limited liability partnership), certificate of interest or participation in a profit-sharing agreement, commodity futures contract, option, put, call, privilege, or other right to purchase or sell a commodity futures contract, margin accounts for the purchase of commodities or commodity futures contracts, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract **regardless of title or caption**, any fractional or pooled interest in a viatical settlement contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, a gas, or a mining title or lease or in payments out of production under the title or lease, an automatic extension or rollover of an existing security, or, in general, an interest or instrument commonly known as a "security", or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant, option, or right to subscribe to or purchase, any of the foregoing. "Security" does not include:

- (1) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period;
- (2) a contract or trust agreement under which money is paid pursuant to a charitable remainder annuity trust or a charitable remainder unitrust (described in Section 664 of the Internal Revenue Code), or a pooled income fund (described in Section 642(c)(5) of the Internal Revenue Code) or an annuity contract under which the purchaser receives a charitable contribution deduction under Section 170 of the Internal Revenue Code; or
- (3) an interest in a limited liability company or limited liability partnership if the person claiming that the interest is not a security can prove that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability

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1 partnership.

2 (l) "State" means a state, territory, or possession of the United
3 States, the District of Columbia, and Puerto Rico.

4 (m) Corporations are "affiliated" during a period of time when either
5 is the owner of shares of the other representing and possessing fifty
6 percent (50%) or more of the total combined voting power of all classes
7 of stock issued by the other corporation and then outstanding and
8 entitled to vote.

9 (n) "Investment adviser" means a person who holds himself **or**
10 **herself** out to be an investment adviser, or who, for compensation,
11 engages in the business of advising others, either directly or through
12 publications or writings, as to the value of securities or as to the
13 advisability of investing in, purchasing, or selling securities, or who,
14 for compensation and as a part of a regular business, issues and
15 promulgates analyses or reports concerning securities. "Investment
16 adviser" does not include any of the following:

- 17 (1) A bank, savings institution, or trust company.
- 18 (2) A lawyer, an accountant, an engineer, or a teacher whose
19 performance of these services is solely incidental to the practice
20 of the person's profession.
- 21 (3) A broker-dealer or its agent whose performance of these
22 services is solely incidental to the conduct of the broker-dealer's
23 business as a broker-dealer and who receives no special
24 compensation for them.
- 25 (4) A publisher of a bona fide newspaper, news column,
26 newsletter, news magazine, or business or financial publication or
27 service, by whatever means communicated, that does not render
28 advice on the specific investment situation of individual clients.
- 29 (5) An investment adviser representative.
- 30 (6) A person who is an investment adviser to an investment
31 company registered under the Investment Company Act of 1940
32 (15 U.S.C. 80a-1 et seq.).
- 33 (7) A person who is registered as an investment adviser under
34 Section 203 of the Investment Advisers Act of 1940 (15 U.S.C.
35 80b-3).
- 36 (8) A person who is excluded from the definition of investment
37 adviser under Section 202(a)(11) of the Investment Advisers Act
38 of 1940 (15 U.S.C. 80b-2).
- 39 (9) Other persons the commissioner may by rule or order
40 designate.

41 (o) "Transferable share" means a security representing an equity
42 interest in a corporation or business trust, but does not include the

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1 shares of open-end investment companies (as defined by the
2 Investment Company Act of 1940, as in effect on December 31, 1990).

3 (p) A "qualified transfer agent" means:

4 (1) a bank whose deposits are insured by the Bank Insurance Fund
5 of the Federal Deposit Insurance Corporation; or

6 (2) a person, independent of the issuer, approved by the
7 commissioner by regulation or by individual order in specific
8 cases.

9 (q) "Investment adviser representative" means a person, except a
10 person in a clerical or ministerial position:

11 (1) who is employed by or associated with an investment adviser
12 registered under this chapter; or

13 (2) who has a place of business located in Indiana and is
14 employed by or associated with a person required to be registered
15 as an investment adviser under Section 203 of the Investment
16 Advisers Act of 1940 (15 U.S.C. 80b-3); and

17 (3) who:

18 (A) makes recommendations or otherwise renders advice
19 regarding securities;

20 (B) manages accounts or portfolios of clients;

21 (C) determines recommendations or advice that should be
22 given regarding securities;

23 (D) solicits, offers, or negotiates the sale of or sells investment
24 advisory services; or

25 (E) supervises employees who perform a duty described in this
26 subsection.

27 (r) "Accredited investor" means a person who is within any of the
28 following categories, or who the issuer reasonably believes is within
29 any of the following categories, at the time of the sale of securities to
30 the person:

31 (1) A person who meets the definition of "accredited investor" (as
32 defined under the Securities Act of 1933 in 17 CFR 230.215), and
33 in any other rule or regulation modifying the definition adopted
34 by the Securities and Exchange Commission as in effect on
35 December 31, 1990.

36 (2) A person to whom an offer or sale may be made without
37 registration pursuant to section 2(b)(8) or 2(b)(9) of this chapter.

38 (3) Any other person the commissioner may designate by rule or
39 order.

40 (s) "Federal covered security" refers to a security described as a
41 covered security in Section 18(b) of the Securities Act of 1933 (15
42 U.S.C. 77r).

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(t) "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of a portion of a death benefit or ownership of a life insurance policy or contract for consideration that is less than the expected death benefit of the life insurance policy or contract. The term does not include the following:

(1) A loan by an insurer under the terms of a life insurance policy, including a loan secured by the cash value of a policy.

(2) An agreement with a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.

(3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.

(4) Agreements between an insurer and a reinsurer.

(5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit.

SECTION 2. IC 23-2-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The following securities are exempted from the registration requirements of section 3 of this chapter:

(1) A security (including a revenue obligation) issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one (1) or more of the foregoing or a certificate of deposit for any of the foregoing.

(2) A security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency, or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) A security issued by and representing an interest in or a debt of, or guaranteed by a bank organized under the laws of the United States, a bank, savings institution, or trust company organized and supervised under the laws of a state, a federal savings association, a savings association organized under the laws of a state and authorized to do business in Indiana, a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of

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1 this state, or a corporation or organization whose issuance of
 2 securities is required by any other law to be passed upon and
 3 authorized by the department of financial institutions or by a
 4 federal agency or authority.

5 (4) A security issued or guaranteed by a railroad or other common
 6 or contract carrier, a public utility, or a common or contract
 7 carrier or public utility holding company. However, an issuer or
 8 guarantor must be subject to regulation or supervision as to the
 9 issuance of its own securities by a public commission, board, or
 10 officer of the government of the United States, of a state, territory,
 11 or insular possession of the United States, of a municipality
 12 located in a state, territory, or insular possession, of the District
 13 of Columbia, or of the Dominion of Canada or a province of
 14 Canada.

15 (5) A security listed or approved for listing upon notice of
 16 issuance on the New York Stock Exchange, the American Stock
 17 Exchange, the Chicago Stock Exchange, or on any other exchange
 18 approved and designated by the commissioner, any other security
 19 of the same issuer that is of senior rank or substantially equal
 20 rank, a security called for by subscription rights or warrants so
 21 listed or approved, or a warrant or right to purchase or subscribe
 22 to any of the foregoing.

23 (6) A promissory note, draft, bill of exchange, or banker's
 24 acceptance that is evidence of:

- 25 (A) an obligation;
- 26 (B) a guarantee of an obligation;
- 27 (C) a renewal of an obligation; or
- 28 (D) a guarantee of a renewal of an obligation;

29 to pay cash within nine (9) months after the date of issuance,
 30 excluding grace days, that is issued in denominations of at least
 31 fifty thousand dollars (\$50,000) and receives a rating in one (1)
 32 of the three (3) highest rating categories from a nationally
 33 recognized statistical rating organization.

34 (7) A security issued in connection with an employee stock
 35 purchase, savings, pension, profit-sharing, or similar benefit plan.

36 (8) A security issued by an association incorporated under
 37 IC 15-7-1.

38 (9) A security that is an industrial development bond (as defined
 39 in Section 103(b)(2) of the Internal Revenue Code of 1954) the
 40 interest of which is excludable from gross income under Section
 41 103(a)(1) of the Internal Revenue Code of 1954 if, by reason of
 42 the application of paragraph (4) or (6) of Section 103(b) of the

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Internal Revenue Code of 1954 (determined as if paragraphs (4)(A), (5), and (7) were not included in Section 103(b)), paragraph (1) of Section 103(b) does not apply to the security.

(10) A security issued by a nonprofit corporation that meets the requirements of Section 103(e) of the Internal Revenue Code of 1954 and is designated by the governor as the secondary market for guaranteed student loans under IC 20-12-21.2.

(11) A security designated or approved for designation upon notice of issuance on the National Association of Securities Dealers Automatic Quotation National Market System or any other national market system approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing.

(12) A security that is a "qualified bond" (as defined in Section 141(e) of the Internal Revenue Code, as amended).

(b) The following transactions are exempted from the registration requirements of section 3 of this chapter:

(1) An isolated nonissuer offer or sale, whether effected through a broker-dealer or not.

(2) A nonissuer sale effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy.

(3) A nonissuer offer or sale by a registered broker-dealer, acting either as principal or agent, of issued and outstanding securities if the following conditions are satisfied:

(A) The securities are sold at prices reasonably related to the current market price at the time of sale, and if the registered broker-dealer is acting as agent, the commission collected by the registered broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.

(B) The securities do not constitute an unsold allotment to or subscription by the broker-dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

(C) Either:

(i) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen (18) months prior to the date of the sale, and a profit and loss statement for either the fiscal

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year preceding that date or the most recent year of operations is published in a securities manual approved by the commissioner;

(ii) the issuer is required to file reports with the Securities and Exchange Commission pursuant to sections 13 and 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and is not delinquent in the filing of the reports on the date of the sale; or

(iii) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than sixteen (16) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is on file with the commissioner. The information required by this item to be on file with the commissioner must be on a form and made in a manner as the commissioner prescribes. The fee for the initial filing of the form shall be twenty-five dollars (\$25). The fee for the annual renewal filing shall be fifteen dollars (\$15). When a filing is withdrawn or is not completed by the issuer, the commissioner must retain the filing fee.

(D) There has been compliance with section 6(l) of this chapter.

(E) Unless the issuer is registered under the Investment Company Act of 1940, all the following must be true at the time of the transaction:

(i) The security belongs to a class that has been in the hands of the public for at least ninety (90) days.

(ii) The issuer of the security is a going concern, is actually engaged in business, and is not in bankruptcy or receivership.

(iii) Except as permitted by order of the commissioner, the issuer and any predecessors have been in continuous operation for at least five (5) years. An issuer or predecessor is in continuous operation only if the issuer or predecessor has gross operating revenue in each of the five (5) years immediately preceding the issuer's or predecessor's claim of exemption and has had total gross operating revenue of at least two million five hundred thousand dollars (\$2,500,000) for those five (5) years or has had gross operating revenue of at least five hundred thousand dollars (\$500,000) in not less than three (3) of those five (5) years.

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The commissioner may revoke the exemption afforded by this ~~subdivision~~ **subsection** with respect to any securities by issuing an order:

(i) if the commissioner finds that the further sale of the securities in this state would work or tend to work a fraud on purchasers of the securities;

(ii) if the commissioner finds that the financial condition of the issuer is such that it is in the public interest and is necessary for the protection of investors to revoke or restrict the exemption afforded by this subsection; or

(iii) if the commissioner finds that, due to the limited number of shares in the hands of the public or due to the limited number of broker-dealers making a market in the securities, there is not a sufficient market for the securities so that there is not a current market price for the securities.

(4) A transaction between the issuer or other person on whose behalf the offering is made by an underwriter, or among underwriters.

(5) A transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness, is offered and sold as a unit.

(6) A transaction by an executor, administrator, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or a person acting in a trust or fiduciary capacity where the transaction is effected pursuant to the authority of or subject to approval by a court of competent jurisdiction.

(7) A transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) An offer or sale to a bank, a savings institution, a trust company, an insurance company, an investment company (as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-52)), a pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity.

(9) The offer or sale of securities of an issuer:

(i) to a person who is:

(A) a director, an executive officer, a general partner, an administrator, or a person who performs similar functions for or who is similarly situated with respect to the issuer;

(B) a director, an executive officer, or a general partner of a

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general partner of the issuer; or

(C) any other natural person employed on a full-time basis by the issuer as an attorney or accountant if the person has been acting in this capacity for at least one (1) year immediately prior to the offer or sale;

(ii) to an entity affiliated with the issuer;

(iii) if the issuer is a corporation, to a person who is the owner of shares of the corporation or of an affiliated corporation representing and possessing ten percent (10%) or more of the total combined voting power of all classes of stock (of the corporation or affiliated corporation) issued and outstanding and who is entitled to vote; or

(iv) if the issuer is a limited liability company, to a person who is the owner of an interest in the limited liability company representing and possessing at least ten percent (10%) of the total combined voting power of all classes of such interests (of the limited liability company or affiliated limited liability company) issued and outstanding.

(10) The offer or sale of a security by the issuer of the security if any of the following apply:

(A) All of the following conditions are satisfied:

(A) The issuer reasonably believes that either:

(i) there are no more than thirty-five (35) purchasers of the securities from the issuer in an offering pursuant to this subsection, including purchasers outside Indiana; or

(ii) there are no more than twenty (20) purchasers in Indiana.

In either case, there shall be excluded in determining the number of purchasers a purchaser whom the issuer reasonably believes to be an accredited investor or who purchases the securities after they are registered under this chapter.

(B) The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation.

(C) The issuer reasonably believes that each purchaser of the securities is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:

(i) obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the

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securities; and

(ii) placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under section 3 of this chapter; and setting forth or referring to the restrictions on transferability and sale of the securities.

(D) The issuer:

(i) files with the commissioner and provides to each purchaser in this state an offering statement that sets forth all material facts with respect to the securities; and

(ii) reasonably believes immediately before making a sale that each purchaser who is not an accredited investor either alone or with a purchaser representative has knowledge and experience in financial and business matters to the extent that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(E) If the aggregate offering price of the securities in an offering pursuant to this subdivision (including securities sold outside of Indiana) does not exceed five hundred thousand dollars (\$500,000); the issuer is not required to comply with clause (D) if the issuer files with the commissioner and provides to each purchaser in Indiana the following information and materials:

(i) copies of all written materials, if any, concerning the securities that have been provided by the issuer to any purchaser; and

(ii) unless clearly presented in all written materials; a written notification setting forth the name, address, and form of organization of the issuer and any affiliate; the nature of the principal businesses of the issuer and any affiliate; and the information required in section 5(b)(1)(B), 5(b)(1)(C), 5(b)(1)(D), 5(b)(1)(E), 5(b)(1)(H), and 5(b)(1)(I) of this chapter.

(F) The commissioner does not disallow the exemption provided by this subdivision within ten (10) full business days after receipt of the filing required by clause (D) or (E). The issuer may make offers (but not sales) before and during the ten (10) day period; if:

(i) each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and

(ii) no enforceable offer to purchase the securities may be made by a prospective purchaser; and no consideration in

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any form may be accepted or received (directly or indirectly) from a prospective purchaser, before the expiration of the ten (10) day period and the vacation of an order disallowing the exemption: set forth in 17 CFR 230.501 through 17 CFR 230.508 are satisfied. However, this exemption does not apply to an offer or sale of a security by the issuer of a security that involves fraud.

~~(G)~~ (B) The issuer need not comply with clause ~~(D)~~, ~~(E)~~, or ~~(F)~~ if Any of the following conditions are satisfied:

(i) Each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer.

(ii) There are not more than fifteen (15) purchasers in Indiana and each Indiana purchaser is an accredited investor or is a purchaser described in item (i). ~~or~~

(iii) The aggregate offering price of the securities, including securities sold outside Indiana, does not exceed five hundred thousand dollars (\$500,000), the total number of purchasers, including purchasers outside of Indiana, does not exceed twenty-five (25), and each purchaser either receives all of the material facts with respect to the security or is an accredited investor or a purchaser described in item (i).

~~(H)~~ If the issuer makes or is required to make a filing with the commissioner under clause ~~(D)~~ or ~~(E)~~, the issuer must also file with the commissioner at the time of the filing the consent to service of process required by section 16 of this chapter. The issuer shall also file with the commissioner, at the times and in the forms as the commissioner may prescribe, notices of sales made in reliance upon this subdivision.

~~(I)~~ (C) The commissioner, ~~may~~ by rule, ~~deny~~ **denies** an exemption provided in this subdivision to a particular class of issuers, or ~~may make~~ **makes** the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter.

(11) An offer or sale of securities to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance if no commission or other remuneration

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(other than a standby commission) is paid or given for soliciting a security holder in this state.

(12) An offer (but not a sale) of a security for which registration statements or applications have been filed under this chapter and the Securities Act of 1933 (15 U.S.C. 77a-77aa), if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either law.

(13) The deposit of shares under a voting-trust agreement and the issue of voting-trust certificates for the deposit.

(14) The offer or sale of a commodity futures contract.

(15) The offer or sale of securities to or for the benefit of security holders incident to a vote by the security holders pursuant to the articles of incorporation or applicable instrument, on a merger or share exchange under IC 23-1-40 or the laws of another state, reclassification of securities, exchange of securities under IC 28-1-7.5, or sale of assets of the issuer in consideration of the issuance of securities of the same or another issuer.

(16) A limited offering transactional exemption, which may be created by rule adopted by the commissioner. The exemption must further the objectives of compatibility with federal exemptions and uniformity among the states.

(c) The commissioner may consider and determine if a proposed sale, transaction, issue, or security is entitled to an exemption accorded by this section. The commissioner may decline to exercise the commissioner's authority as to a proposed sale, transaction, issue, or security. An interested party desiring the commissioner to exercise the commissioner's authority must submit to the commissioner a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which must be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of one hundred dollars (\$100). After notice to the interested parties as the commissioner determines is proper and after a hearing, if any, the commissioner may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption claimed. An order entered, unless an appeal is taken from it in the manner prescribed in section 20 of this chapter, is binding upon the commissioner and upon all interested parties, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement submitted.

(d) The commissioner may by order deny or revoke an exemption specified in subsection (a)(6), (a)(7), or (b) with respect to a specific

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1 security or transaction, if the commissioner finds that the securities to
 2 which the exemption applies would not qualify for registration under
 3 sections 4 and 5 of this chapter. No order may be entered without
 4 appropriate prior notice to all interested parties, opportunity for
 5 hearing, and written findings of fact and conclusions of law, except that
 6 the commissioner may by order summarily deny or revoke any of the
 7 specific exemptions pending final determination of a proceeding under
 8 this subsection. Upon the entry of a summary order, the commissioner
 9 shall promptly notify all interested parties that it has been entered, of
 10 the reasons for the order, and that within fifteen (15) days of the receipt
 11 of a written request the matter will be set down for hearing. If no
 12 hearing is requested and none is ordered by the commissioner, the
 13 order will remain in effect until it is modified or vacated by the
 14 commissioner. If a hearing is requested or ordered, the commissioner,
 15 after notice of and opportunity for hearing to all interested persons,
 16 may modify or vacate the order or extend it until final determination.
 17 No order under this subsection may operate retroactively. No person
 18 may be considered to have violated section 3 of this chapter by reason
 19 of an offer or sale effected after the entry of an order under this
 20 subsection if the person sustains the burden of proof that the person did
 21 not know, and in the exercise of reasonable care could not have known,
 22 of the order.

23 (e) If, with respect to an offering of securities, any notices or written
 24 statements are required to be filed with the commissioner under
 25 subsection (b)(10), the first filing made with respect to the offering
 26 must be accompanied by a filing fee of one hundred dollars (\$100).

27 (f) A condition, stipulation, or provision requiring a person
 28 acquiring a security to waive compliance with this chapter or a rule or
 29 order under this chapter is void.

30 SECTION 3. IC 23-2-1-4 IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A security for which a
 32 registration statement has been filed under the Securities Act of 1933
 33 in connection with the same offering may be registered by
 34 coordination.

35 (b) An application for registration under this section shall be filed
 36 with the commission and shall contain the following information and
 37 be accompanied by the following documents, in addition to the
 38 information specified in section 6(e) of this chapter, and the consent to
 39 service of process required by section 16 of this chapter:

40 (1) One (1) copy of the latest registration statement filed under
 41 the Securities Act of 1933 as of the date of filing under this
 42 section.

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(2) If the commissioner, by rule or otherwise, requires a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of an indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security.

(3) If the commissioner requests, other information, or copies of other documents, filed under the Securities Act of 1933.

(4) An undertaking to forward all future amendments to the federal prospectus other than an amendment that merely delays the effective date of the registration promptly, and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) An application for registration under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under section 7 of this chapter.

(2) The application for registration has been on file with the commissioner for at least ~~ten (10)~~ **thirty (30)** business days.

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or a shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(4) The registrant promptly notifies the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any.

(5) The registrant promptly files a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(d) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the application for registration or suspending its effectiveness until compliance with this subsection, if

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the commissioner promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when the commissioner notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsection (c)(2), (c)(3), (c)(4), and (c)(5). If the federal registration statement becomes effective before all conditions in this subsection are satisfied and they are not waived, the application for registration automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram at the registrant's expense, whether all the conditions are satisfied and whether the commissioner then contemplates the institution of a proceeding under section 7 of this chapter. The advice of the commissioner does not preclude the institution of a proceeding at any time.

SECTION 4. IC 23-2-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A registered broker-dealer shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner requires by rule or otherwise. The commissioner's requirements may not exceed the limitations provided in Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o).

(b) An investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner requires by rule or otherwise. The commissioner's requirements may not exceed the limitations provided in Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a). The commissioner may prescribe by rule or otherwise the period that an investment adviser must retain records.

(c) All the records of a registered broker-dealer or an investment adviser are subject at any time to reasonable periodic, special, or other examinations by representatives of the commissioner, within or without Indiana, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. No charges or other examination fees may be assessed against a registered broker-dealer or an investment adviser as a result of an examination under this subsection unless the examination results in an investigation or examination made under section 16(d) of this chapter. To avoid

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1 duplication of examinations of records, the commissioner may
 2 cooperate with the securities administrators of other states, the
 3 Securities and Exchange Commission, and any national securities
 4 exchange or national securities association registered under the
 5 Securities and Exchange Act of 1934 (15 U.S.C. 77b et seq.).

6 (d) Every registered broker-dealer and investment adviser shall file
 7 financial reports and other reports as the commissioner by rule or order
 8 prescribes. The commissioner's reporting requirements for registered
 9 broker-dealers may not exceed the limitations provided in Section 15
 10 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o). The
 11 commissioner's reporting requirements for investment advisers may not
 12 exceed the limitations provided in Section 222 of the Investment
 13 Advisers Act of 1940 (15 U.S.C. 80b-18a).

14 (e) If the information contained in a document filed with the
 15 commissioner is or becomes inaccurate or incomplete in any material
 16 respect, the registrant shall promptly file a correcting amendment.

17 (f) The commissioner may require investment advisers to furnish or
 18 disseminate certain information necessary or appropriate for the public
 19 interest or to protect investors or clients. The commissioner may
 20 determine that the information furnished to clients or prospective
 21 clients of an investment adviser under the Investment Advisors Act of
 22 1940 (15 U.S.C. 80a-1 et seq.) and the rules adopted under the
 23 Investment Advisers Act of 1940 may be used to satisfy this
 24 requirement.

25 (g) The commissioner may annually select as many as twenty-five
 26 percent (25%) of all Indiana home and branch offices of registered
 27 broker-dealers for completion of compliance reports. The offices shall
 28 be selected at random. Each broker-dealer office that is selected shall
 29 file its compliance report according to rules adopted by the
 30 commissioner under IC 4-22-2 not more than ninety (90) days after
 31 being notified of selection under this subsection. **If an office submits**
 32 **a compliance report indicating material noncompliance with this**
 33 **chapter, the securities division may conduct a follow-up**
 34 **examination of the office. A follow-up examination under this**
 35 **subsection must be limited to the areas of noncompliance indicated**
 36 **in the compliance report submitted by the office. The securities**
 37 **division shall conduct a follow-up examination under this**
 38 **subsection not later than twelve (12) months after the securities**
 39 **division notifies the office that the office has taken sufficient**
 40 **corrective actions to address the areas of noncompliance indicated**
 41 **in the compliance report. For purposes of the twenty-five percent**
 42 **(25%) annual limit on the number of Indiana home and branch**

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1 offices that may be randomly selected for a compliance report
 2 under this subsection, the securities division shall treat a follow-up
 3 examination of an office under this subsection as an examination
 4 of a separate office, with each follow-up examination conducted
 5 reducing the number of other offices that may be randomly
 6 selected for a compliance examination by one (1). No charges or
 7 other examination fees may be assessed against a registered
 8 broker-dealer as a result of the examination of a compliance report filed
 9 under this subsection, or as a result of a follow-up examination
 10 under this subsection, unless the examination or follow-up
 11 examination results in an investigation or examination made under
 12 section 16(d) of this chapter.

13 SECTION 5. IC 23-2-1-15 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) This chapter
 15 shall be administered by a division of the office of the secretary of
 16 state. The secretary of state shall appoint a securities commissioner
 17 who shall be responsible for the direction and supervision of the
 18 division and the administration of this chapter under the direction and
 19 control of the secretary of state. The salary of the securities
 20 commissioner shall be paid out of the funds appropriated for the
 21 administration of this chapter. The commissioner shall serve at the will
 22 of the secretary of state.

23 (b) The secretary of state:

- 24 (1) shall employ a chief deputy, a senior investigator, a senior
 25 accountant, and other deputies, investigators, accountants, clerks,
 26 stenographers, and other employees necessary for the
 27 administration of this chapter; and
- 28 (2) shall fix their compensation with the approval of the budget
 29 agency.

30 The chief deputy, other deputies, the senior investigator, and the senior
 31 accountant, once employed under this chapter, may be dismissed only
 32 for cause by the secretary of state upon ten (10) days notice in writing
 33 stating the reasons for dismissal. Within fifteen (15) days after
 34 dismissal, the chief deputy, other deputies, the senior investigator, and
 35 the senior accountant may appeal to the state personnel board. The
 36 state personnel board shall hold a hearing, and if it finds that the
 37 appealing party was dismissed for a political, social, religious, or racial
 38 reason, the appealing party shall be reinstated to the appealing party's
 39 position without loss of pay. In all other cases, if the decision is
 40 favorable to the appealing party, the secretary of state shall follow the
 41 findings and recommendations of the board, which may include
 42 reinstatement and payment of salary or wages lost. The hearing and any

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1 subsequent proceedings or appeals shall be governed by the provisions
2 of IC 4-15-2 and IC 4-21.5.

3 (c) Fees and funds of whatever character accruing from the
4 administration of this chapter shall be accounted for by the secretary of
5 state and shall be deposited with the treasurer of state to be deposited
6 by the treasurer of state in the general fund of the state. Expenses
7 incurred in the administration of this chapter shall be paid from the
8 general fund upon appropriation being made for the expenses in the
9 manner provided by law for the making of those appropriations.
10 However, costs of investigations recovered under sections 16(d) and
11 17.1(c) of this chapter shall be deposited with the treasurer of state to
12 be deposited by the treasurer of state in a separate account to be known
13 as the securities division enforcement account. The funds in the
14 account shall be available, with the approval of the budget agency, to
15 augment and supplement the funds appropriated for the administration
16 of this chapter. The funds in the account do not revert to the general
17 fund at the end of any fiscal year.

18 (d) In connection with the administration and enforcement of the
19 provisions of this chapter, the attorney general shall render all
20 necessary assistance to the securities commissioner upon the
21 commissioner's request, and to that end, the attorney general shall
22 employ legal and other professional services as are necessary to
23 adequately and fully perform the service under the direction of the
24 securities commissioner as the demands of the securities division shall
25 require. Expenses incurred by the attorney general for the purposes
26 stated in this subsection shall be chargeable against and paid out of
27 funds appropriated to the attorney general for the administration of the
28 attorney general's office.

29 (e) Neither the secretary of state, the securities commissioner, nor
30 an employee of the securities division shall be liable in their individual
31 capacity, except to the state, for an act done or omitted in connection
32 with the performance of their respective duties under this chapter.

33 (f) The commissioner, subject to the approval of the secretary of
34 state, may adopt rules, orders, and forms necessary to carry out this
35 chapter, including rules and forms concerning registration statements,
36 applications, reports, and the definitions of any terms if the definitions
37 are consistent with this chapter. The commissioner may by rule or order
38 allow for exemptions from registration requirements under sections 3
39 and 8 of this chapter if the exemptions are consistent with the public
40 interest and this chapter.

41 (g) The provisions of this chapter delegating and granting power to
42 the secretary of state, the securities division, and the securities

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commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division, and the securities commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for its effective administration.

(h) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the securities commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this chapter and in a civil proceeding or action arising under this chapter. If the commissioner determines that an action based on the securities division's investigations is meritorious:

- (1) the commissioner or a designee empowered by the commissioner shall certify the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;
- (2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;
- (3) a prosecuting attorney to whom facts concerning fraud are certified under subdivision (1) may refer the matter to the attorney general; and
- (4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:
 - (A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and
 - (B) prosecute the alleged offense.

(i) The securities commissioner shall take, prescribe, and file the oath of office prescribed by law. The securities commissioner, senior investigator, and each deputy are police officers of the state and shall have all the powers and duties of police officers in making arrests for

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violations of this chapter, or in serving any process, notice, or order connected with the enforcement of this chapter by whatever officer or authority or court issued. The securities commissioner, the deputy commissioners for enforcement, **the enforcement attorneys, the prosecution assistance unit attorneys**, and the investigators comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(j) The securities commissioner and each employee of the securities division shall be reimbursed for necessary hotel and travel expenses when required to travel on official duty. Hotel and travel reimbursements shall be paid in accordance with the travel regulations prescribed by the budget agency.

(k) It is unlawful for the secretary of state, the securities commissioner, or the securities division's employees to use for personal benefit information that is filed with or obtained by the securities division and that is not made public. No provision of this chapter authorizes the secretary of state, the securities commissioner, or the employees of the securities division to disclose information except:

(1) among themselves;

(2) **to other law enforcement agencies within the United States;** or

(3) when necessary or appropriate, in a proceeding or investigation under this chapter.

No provision of this chapter either creates or derogates from a privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the secretary of state, the securities commissioner, or the securities division or its employees.

(l) The commissioner may honor requests from interested persons for interpretative opinions and from interested persons for determinations that the commissioner will not institute enforcement proceedings against specified persons for specified activities. A determination not to institute enforcement proceedings must be consistent with this chapter. A person may not request an interpretive opinion concerning an activity that:

(1) occurred before; or

(2) is occurring on;

the date that the opinion is requested. The commissioner shall charge a fee of one hundred dollars (\$100) for an interpretative opinion or determination.

SECTION 6. IC 23-2-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) With the filing of any application for registration pursuant to this chapter, there shall

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1 be filed the irrevocable written consent of the applicant that suits and
 2 actions growing out of the violation of any provision or provisions of
 3 this chapter may be commenced against the applicant in the proper
 4 courts of any county in this state in which a cause of action may arise,
 5 or in which the plaintiff may reside, by the service of any process or
 6 pleading authorized by the laws of this state upon the secretary of state.
 7 The consent must stipulate and agree that service of process or
 8 pleadings on the secretary of state shall be taken and held in all courts
 9 to be as valid and binding as if due service has been made upon the
 10 applicant. The written consent shall be authenticated by:

11 (1) the seal of the applicant if the applicant has a seal; and

12 (2) the acknowledged signature of:

13 (A) the members of the partnership, or the depositors,
 14 managers, or committee;

15 (B) any officers of the corporation, or of the incorporated or
 16 unincorporated association if the applicant be an incorporated
 17 or unincorporated association, duly authorized by resolution of
 18 the board of directors, trustees, or managers of the corporation
 19 or association, and accompanied by a duly certified copy of the
 20 resolution of the board of directors, trustees, or managers of
 21 the corporation or association authorizing the officers to
 22 execute the same; or

23 (C) any members or managers of the limited liability company,
 24 duly authorized by the members and managers of the limited
 25 liability company and accompanied by a duly certified copy of
 26 the resolution of the members or managers of the limited
 27 liability company which authorizes the members or managers
 28 to execute the same.

29 **A person that engages in an act, a practice, or conduct prohibited**
 30 **by this chapter, regulations, or an order established by the**
 31 **commissioner and has not filed consent under this subsection, is**
 32 **considered to appoint the secretary of state as an agent of the**
 33 **person for service of process in noncriminal actions or proceedings**
 34 **against the person.**

35 (b) The engaging in this state by a nonresident broker-dealer,
 36 investment advisor, agent, issuer, offeror, or seller in any transaction,
 37 or the doing of any business in this state involving a sale of securities
 38 or an offer to sell securities shall be deemed equivalent to an
 39 appointment by the nonresident broker-dealer, investment advisor,
 40 agent, issuer, offeror, or seller of the secretary of state, or ~~his~~ **the**
 41 **secretary of state's** successor in office, to be ~~his~~ **the** true and lawful
 42 **attorney of the nonresident broker-dealer, investment advisor,**

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1 **agent, issuer, offeror, or seller** upon whom may be served any lawful
 2 process, writ, notice, or order, in any action or proceeding against such
 3 nonresident broker-dealer, investment advisor, agent, issuer, offeror, or
 4 seller, arising or growing out of any transaction, or of the doing of any
 5 business involving a sale of securities, or offer to sell securities in this
 6 state. The engaging in any such transaction, or the doing of any such
 7 business in this state, shall be signification of the agreement of such
 8 nonresident broker-dealer, investment advisor, agent, issuer, offeror, or
 9 seller that any process, writ, notice, or order against ~~him~~ **the**
 10 **nonresident broker-dealer, investment advisor, agent, issuer,**
 11 **offeror, or seller** which is so served shall be of the same legal force
 12 and effect as if served upon such nonresident broker-dealer, investment
 13 advisor, agent, issuer, offeror, or seller personally. Any action or
 14 proceeding against a nonresident broker-dealer, agent, issuer, offeror,
 15 or seller may be instituted or commenced in the proper court of any
 16 county in this state in which the nonresident broker-dealer, investment
 17 advisor, agent, issuer, offeror, or seller shall have engaged in any
 18 transaction or shall have done any business in this state involving a sale
 19 of securities, or an offer to sell securities, or in the county in which the
 20 person bringing the action may reside.

21 (c) The service of any process, writ, notice, or order against an
 22 applicant **or person** not domiciled in this state, or against a nonresident
 23 broker-dealer, investment advisor, agent, issuer, offeror, or seller, shall
 24 be made by leaving duplicate copies thereof with a fee of two dollars
 25 (\$2) with the secretary of state, or in ~~his~~ **the secretary of state's** office,
 26 and the service shall be deemed sufficient service, if the notice of
 27 service and a copy of the process, writ, notice, or order are forthwith
 28 sent by registered mail with return receipt requested, addressed to the
 29 person so served at the address disclosed upon any such written
 30 consent that may have been filed in the office of the secretary of state,
 31 or as disclosed upon any written notification of address filed by the
 32 person to be served, or if no address is filed in the office of the
 33 secretary of state then at any other address, if any, known or disclosed
 34 to the secretary of state. Upon return of the return receipt showing
 35 delivery and the acceptance of the registered mail, or upon the return
 36 of the registered mail showing a refusal of the acceptance, the secretary
 37 of state shall attach either the return receipt or the refused mail to the
 38 copy of the process, writ, notice, or order retained by ~~him~~; **the**
 39 **secretary of state** and mail the same to the clerk of the court in which
 40 the action or proceeding is pending in respect to which the process,
 41 writ, notice, or order was issued, or the secretary of state shall return
 42 the copy of the process, writ, notice, or order to the clerk with the

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advice, if such be the case, that no address to which the process, writ, notice, or order may be mailed is known to the secretary of state. The clerk of the court shall thereupon file the same, and the same shall be deemed a part of the record in the action or proceeding without a special bill of exceptions therefor. Refusal of any person to accept delivery of the registered mail provided in this section, or the refusal to sign the return receipt, or the ignorance of the secretary of state of any address to which process, writ, notice, or order may have been mailed, shall not in any manner affect the legality or effect of service, and the person shall be presumed to have had knowledge of the contents of any process, writ, notice, or order contained therein, or issued in connection with any proceeding resulting from the transaction in which the person may have participated in this state. No process, writ, notice, or order served in this section provided shall be returnable in less than twenty (20) days from the date the same shall have been issued.

(d) The securities division is authorized to make investigations and examinations:

(1) in connection with any application for registration of any security, broker-dealer, investment advisor, or agent, or any registration thereof already granted; or

(2) whenever it appears to the commissioner upon the basis of a complaint or information that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.

On investigations and examinations made by the commissioner or an employee of the securities division, all reasonable expenses, including, but not limited to, a per diem prorated upon the salary of such commissioner or employee together with the actual traveling and hotel expenses, may be charged as costs of the investigation or examination to be paid by the party or parties under investigation or examination. Before a hearing on the matter under investigation, the commissioner may require the posting of a bond in the penal sum of five hundred dollars (\$500), or in such other additional amount as may be required to guarantee the payment of the costs of the investigation and hearing, to the state of Indiana with sufficient surety to be approved by the commissioner.

(e) The secretary of state or the commissioner shall have the power to sign all orders, official certifications, documents, or papers, under any of the provisions of this chapter. The commissioner shall have the power to:

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(1) hold and conduct hearings before the commissioner or authorize the same to be held before a hearing officer appointed by the commissioner in any county in Indiana;

(2) hear evidence;

(3) conduct inquiries with or without hearings;

(4) receive reports of investigators or other officers or employees of the state of Indiana, or of any municipal corporation within the state or governmental subdivision;

(5) administer oaths, or cause them to be administered;

(6) subpoena witnesses, and compel them to attend and testify; and

(7) to compel the production of books, records, and other documents.

(f) Upon:

(1) disobedience on the part of any person to any lawful subpoena issued under authority of this chapter, or to any lawful order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) the refusal of any witness to appear when subpoenaed, or to testify to any matter regarding which ~~he~~ **the witness** may be lawfully interrogated, or to take or subscribe to any oath required by this chapter;

it shall be the duty of the circuit or superior court of the county in which the hearing or inquiry or investigation in question is being or is to be held, where demand is made, or where said production is ordered to be made, upon written petition of the commissioner or a hearing officer appointed by the commissioner, to compel obedience to the lawful requirements of the subpoena, order, or demand, to compel the production of the necessary or required books, papers, records, documents, and other evidence and information, to compel any witness to attend in any county within this state and to testify to any matter regarding which ~~he~~ **the witness** may lawfully be interrogated, and to take or subscribe to any oath required, and, upon the failure, refusal, or neglect of any person to comply with any order of any court or judge thereof, as provided in this section, such person shall be punished for contempt of court.

(g) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner or a hearing officer appointed by the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being

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1 conducted requesting a hearing on the refusal. The court shall hold a
 2 hearing to determine if the witness may refuse to answer the question
 3 or produce the item. If the court determines that the witness, based
 4 upon his privilege against self-incrimination, may properly refuse to
 5 answer or produce an item, the commissioner or a hearing officer
 6 appointed by the commissioner may make a written request that the
 7 court grant use immunity to the witness. Upon written request of the
 8 commissioner or a hearing officer appointed by the commissioner, the
 9 court shall grant use immunity to a witness. The court shall instruct the
 10 witness, by written order or in open court, that:

11 (1) any evidence the witness gives, or evidence derived from that
 12 evidence, may not be used in any criminal proceedings against
 13 that witness, unless the evidence is volunteered by the witness or
 14 is not responsive to a question; and

15 (2) the witness must answer the questions asked and produce the
 16 items requested.

17 A grant of use immunity does not prohibit the use of evidence that the
 18 witness gives in a hearing, investigation, or inquiry from being used in
 19 a prosecution for perjury under IC 35-44-2-1. If a witness refuses to
 20 give the evidence after the witness has been granted use immunity, the
 21 court may find the witness in contempt.

22 (h) Upon order of the commissioner or a hearing officer appointed
 23 by the commissioner in any hearing, depositions may be taken of any
 24 witness residing within or without the state. The depositions shall be
 25 taken in the manner prescribed by law for depositions in civil actions
 26 and made returnable to the commissioner or a hearing officer appointed
 27 by the commissioner.

28 (i) Each witness who shall appear before the commissioner or a
 29 hearing officer appointed by the commissioner by order shall receive
 30 for the witness's attendance the fees and mileage provided for witnesses
 31 in civil cases, which shall be audited and paid by the state in the same
 32 manner as other expenses of the securities division are audited and paid
 33 upon the presentation of proper vouchers sworn to by the witnesses and
 34 approved by the commissioner. However, no witnesses subpoenaed at
 35 the instance of parties other than the commissioner or a hearing officer
 36 appointed by the commissioner shall be entitled to any fee or
 37 compensation from the state.

38 (j) It is not necessary to negative any of the exemptions or
 39 classifications in this chapter provided in any complaint, information,
 40 indictment, or any other writ or proceedings laid or brought under this
 41 chapter, and the burden of proof of any exemption or classification
 42 shall be upon the party claiming the benefits of the exemption or

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1 classification.

2 (k) In any prosecution, action, suit, or proceeding based upon or
3 arising out of or under the provisions of this chapter, a certificate duly
4 signed by the commissioner showing compliance or noncompliance
5 with the provisions of this chapter respecting the security in question
6 or respecting compliance or noncompliance with the provisions of this
7 chapter, by any issuer, broker-dealer, investment advisor, or agent,
8 shall constitute prima facie evidence of compliance or noncompliance
9 with the provisions of this chapter, as the case may be, and shall be
10 admissible in evidence in any action at law or in equity to enforce the
11 provisions of this chapter.

12 (l) Copies of any statement and documents filed in the office of the
13 secretary of state and of any records of the secretary of state certified
14 to by the commissioner or any deputy shall be admissible in any
15 prosecution, action, suit, or proceeding based upon, or arising out of,
16 or under the provisions of this chapter to the same effect as the original
17 of such statement, document, or record would be if actually produced.

18 (m) Whenever, under the provisions of this chapter, any person is
19 entitled to receive notice or required to be served with notice in any
20 proceeding instituted by the commissioner pursuant to the provisions
21 of this chapter, notice shall be deemed sufficient:

22 (1) if sent by registered mail with return receipt requested to that
23 person or the person's designated attorney or agent for service of
24 process at:

25 (A) the person's last known residence;
26 (B) the person's last known place of business; or
27 (C) the last known address at which the person purports to
28 receive mail;

29 (2) if personally delivered and left with a person of suitable age
30 or in a conspicuous place at:

31 (A) the person's last known residence;
32 (B) the person's last known place of business; or
33 (C) the last known address at which the person purports to
34 receive mail; or

35 (3) by personal service on the person.

36 **(n) The commissioner may:**

37 **(1) adopt rules under IC 4-22-2; or**

38 **(2) issue orders;**

39 **regarding service of process on a person that is not registered**
40 **under this chapter.**

41 SECTION 7. IC 23-2-1-16.5 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16.5. The

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commissioner may issue, and apply to a court to enforce, subpoenas in Indiana at the request of a securities agency or administrator of another state. ~~if the subpoena concerns an alleged violation that would be a violation of this chapter.~~

SECTION 8. IC 23-2-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) An appeal may be taken by:

- (1) any issuer, investment advisor, or registered broker-dealer upon whose application for registration of an issue of securities may have been granted or denied, from any final order of the commissioner respecting that application or registration;
- (2) any applicant for registration as a broker-dealer, investment advisor, or agent or any registered broker-dealer, investment advisor, or agent, from any final order of the commissioner affecting the application or registration as a broker-dealer, investment advisor, or agent;
- (3) any person against whom a civil penalty has been imposed under section 19.5(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or
- (4) any person who is named a respondent, from any final order issued by the commissioner under section 17.1 of this chapter; to the Marion Circuit Court, or to the circuit or superior court of the county wherein the person taking the appeal resides or maintains a place of business.

(b) Within twenty (20) days from the entry of the order, the commissioner shall be served with:

- (1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;
- (2) a demand in writing for a certified transcript of the record and of all papers on file in his office affecting or relating to the order; and
- (3) a bond in ~~the penal sum of five hundred dollars (\$500)~~ **an amount that the commissioner determines to be sufficient to cover the amount set forth in the final order of the commissioner** to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that shall be adjudged against the appellant.

(c) After the commissioner has been served with the items specified in subsection (b), the commissioner shall within ten (10) days make, certify, and deliver to the appellant the transcript, and the appellant

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shall:

(1) **pay a fee to the commissioner for the costs of certifying and delivering the transcripts under this subsection; and**

(2) within five (5) days file the ~~same transcript~~ and a copy of the notice of appeal with the clerk of the court.

~~which~~ The notice of appeal shall stand as appellant's complaint, and the commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar ~~for trial de novo~~ and given precedence over all matters pending in the court.

(d) The court shall ~~receive and consider any pertinent evidence, whether oral or documentary, concerning the order of the commissioner from which the appeal is taken.~~ **only issues of law on appeal of the order of the commissioner.** If the order of the commissioner shall be reversed, the court shall in its mandate specifically direct the commissioner as to ~~his~~ further action in the matter, including the making and entering of any order or orders in connection therewith and the conditions, limitations, or restrictions to be contained. The commissioner is not barred from revoking or altering the order for any proper cause which may thereafter accrue or be discovered. If the order shall be affirmed the appellant is not barred after thirty (30) days from filing a new application if the application is not otherwise barred or limited. The appeal shall in nowise suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court. An appeal may be taken from the judgment of the court on any appeal on the same terms and conditions as an appeal is taken in civil actions.

SECTION 9. IC 23-2-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. ~~Except as provided in section 15(b) of this chapter,~~ IC 4-21.5 shall not be applicable to any of the proceedings under this chapter.

SECTION 10. IC 25-11-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. **(a) As used in this section, "secretary of state" means the secretary of state or the secretary of state's designee.**

(b) Upon the filing with the secretary of state, by any interested person, of a verified written complaint which charges any licensee hereunder with a specific violation of any of the provisions of this chapter, the secretary of state shall cause an investigation of the complaint to be made. If the investigation shows probable cause for the revocation or suspension of the license, the secretary of state shall send a written notice to such licensee, stating in such notice the alleged grounds for the revocation or suspension and fixing a time and place

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for the hearing thereof. The hearing shall be held not less than five (5) days nor more than twenty (20) days from the time of the mailing of said notice. The secretary of state may subpoena witnesses, books, and records and may administer oaths. The licensee may appear and defend against such charges in person or by counsel. If upon such hearing the secretary of state finds the charges to be true, the secretary of state shall either revoke or suspend the license of the licensee. Suspension shall be for a time certain and in no event for a longer period than one (1) year. No license shall be issued to any person whose license has been revoked for a period of two (2) years from the date of revocation. Reapplication for a license, after revocation as provided, shall be made in the same manner as provided in this chapter for an original application for a license.

SECTION 11. IC 27-1-15.6-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 35. (a) As used in this section, "securities commissioner" refers to the commissioner appointed by the secretary of state under IC 23-2-1-15.**

(b) The commissioner may conduct investigations, enforce actions, and take other official action that the commissioner considers appropriate to ensure compliance with IC 27-4-1-4(28) concerning the sale of variable annuity contracts. In acting under this section, the commissioner may consult with the securities commissioner and may use the resources of the securities commissioner in making a final determination of any issue concerning compliance with IC 27-4-1-4(28) concerning the sale of variable annuity contracts.

(c) If the securities commissioner is informed of a violation or suspected violation of IC 27-4-1-4(28) concerning the sale of variable annuity contracts or of the insurance laws and rules of the state, the securities commissioner shall timely advise the commissioner of the violation or suspected violation.

SECTION 12. IC 27-4-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the

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- 1 dividends or share of surplus previously paid on similar
 2 policies;
 3 (C) making any misleading representation or any
 4 misrepresentation as to the financial condition of any insurer,
 5 or as to the legal reserve system upon which any life insurer
 6 operates;
 7 (D) using any name or title of any policy or class of policies
 8 misrepresenting the true nature thereof; or
 9 (E) making any misrepresentation to any policyholder insured
 10 in any company for the purpose of inducing or tending to
 11 induce such policyholder to lapse, forfeit, or surrender the
 12 policyholder's insurance.
- 13 (2) Making, publishing, disseminating, circulating, or placing
 14 before the public, or causing, directly or indirectly, to be made,
 15 published, disseminated, circulated, or placed before the public,
 16 in a newspaper, magazine, or other publication, or in the form of
 17 a notice, circular, pamphlet, letter, or poster, or over any radio or
 18 television station, or in any other way, an advertisement,
 19 announcement, or statement containing any assertion,
 20 representation, or statement with respect to any person in the
 21 conduct of the person's insurance business, which is untrue,
 22 deceptive, or misleading.
- 23 (3) Making, publishing, disseminating, or circulating, directly or
 24 indirectly, or aiding, abetting, or encouraging the making,
 25 publishing, disseminating, or circulating of any oral or written
 26 statement or any pamphlet, circular, article, or literature which is
 27 false, or maliciously critical of or derogatory to the financial
 28 condition of an insurer, and which is calculated to injure any
 29 person engaged in the business of insurance.
- 30 (4) Entering into any agreement to commit, or individually or by
 31 a concerted action committing any act of boycott, coercion, or
 32 intimidation resulting or tending to result in unreasonable
 33 restraint of, or a monopoly in, the business of insurance.
- 34 (5) Filing with any supervisory or other public official, or making,
 35 publishing, disseminating, circulating, or delivering to any person,
 36 or placing before the public, or causing directly or indirectly, to
 37 be made, published, disseminated, circulated, delivered to any
 38 person, or placed before the public, any false statement of
 39 financial condition of an insurer with intent to deceive. Making
 40 any false entry in any book, report, or statement of any insurer
 41 with intent to deceive any agent or examiner lawfully appointed
 42 to examine into its condition or into any of its affairs, or any

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public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and

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1 indemnity, or other risks commonly insured under marine,
 2 as distinguished from inland marine, insurance; or
 3 (iii) policies or contracts of any other kind or kinds of
 4 insurance whatsoever.

5 However, nothing contained in clause (C) shall be construed to
 6 apply to any of the kinds of insurance referred to in clauses (A)
 7 and (B) nor to reinsurance in relation to such kinds of insurance.
 8 Nothing in clause (A), (B), or (C) shall be construed as making or
 9 permitting any excessive, inadequate, or unfairly discriminatory
 10 charge or rate or any charge or rate determined by the department
 11 or commissioner to meet the requirements of any other insurance
 12 rate regulatory law of this state.

13 (8) Except as otherwise expressly provided by law, knowingly
 14 permitting or offering to make or making any contract or policy
 15 of insurance of any kind or kinds whatsoever, including but not in
 16 limitation, life annuities, or agreement as to such contract or
 17 policy other than as plainly expressed in such contract or policy
 18 issued thereon, or paying or allowing, or giving or offering to pay,
 19 allow, or give, directly or indirectly, as inducement to such
 20 insurance, or annuity, any rebate of premiums payable on the
 21 contract, or any special favor or advantage in the dividends,
 22 savings, or other benefits thereon, or any valuable consideration
 23 or inducement whatever not specified in the contract or policy; or
 24 giving, or selling, or purchasing or offering to give, sell, or
 25 purchase as inducement to such insurance or annuity or in
 26 connection therewith, any stocks, bonds, or other securities of any
 27 insurance company or other corporation, association, limited
 28 liability company, or partnership, or any dividends, savings, or
 29 profits accrued thereon, or anything of value whatsoever not
 30 specified in the contract. Nothing in this subdivision and
 31 subdivision (7) shall be construed as including within the
 32 definition of discrimination or rebates any of the following
 33 practices:

34 (A) Paying bonuses to policyholders or otherwise abating their
 35 premiums in whole or in part out of surplus accumulated from
 36 nonparticipating insurance, so long as any such bonuses or
 37 abatement of premiums are fair and equitable to policyholders
 38 and for the best interests of the company and its policyholders.

39 (B) In the case of life insurance policies issued on the
 40 industrial debit plan, making allowance to policyholders who
 41 have continuously for a specified period made premium
 42 payments directly to an office of the insurer in an amount

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which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

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(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made

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under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) An insurance producer, or an insurer in any case in which a producer is not involved, recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions that are unsuitable, as defined by the department in an adopted rule, for the senior consumer on the basis of the facts disclosed by the senior consumer

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1 concerning the senior consumer's:

2 (A) investments and other insurance products; and

3 (B) financial situation and needs.

4 A recommendation of an insurance producer or an insurer is
5 not an unfair method of competition or an unfair and
6 deceptive act or practice under this section if the
7 recommendation is made in compliance with the National
8 Association of Securities Dealers Conduct Rules concerning
9 suitability, as determined by the commissioner. As used in this
10 section, "senior consumer" means an individual who is at
11 least sixty-five (65) years of age. In the case of a joint
12 purchase by more than one (1) party, the purchaser is
13 considered a senior consumer if any of the parties is at least
14 sixty-five (65) years of age.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1660, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 28, delete "a fixed".

Page 11, line 3, strike "subdivision" and insert "**subsection**".

Page 12, line 19, delete "if:" and insert "if **any of the following apply:**".

Page 12, line 20, delete "all" and insert "All".

Page 14, line 8, before "the" insert "**Any of**".

Page 14, line 31, delete "the" and insert "The".

Page 19, line 24, reset in roman "as many as twenty-five".

Page 19, line 25, reset in roman "percent (25%) of all".

Page 19, line 26, reset in roman "The offices shall".

Page 19, line 27, reset in roman "be selected at random".

Page 19, line 30, after "subsection." insert "**If an office submits a compliance report indicating material noncompliance with this chapter, the securities division may conduct a follow-up examination of the office. A follow-up examination under this subsection must be limited to the areas of noncompliance indicated in the compliance report submitted by the office. The securities division shall conduct a follow-up examination under this subsection not later than twelve (12) months after the securities division notifies the office that the office has taken sufficient corrective actions to address the areas of noncompliance indicated in the compliance report. For purposes of the twenty-five percent (25%) annual limit on the number of Indiana home and branch offices that may be randomly selected for a compliance report under this subsection, the securities division shall treat a follow-up examination of an office under this subsection as an examination of a separate office, with each follow-up examination conducted reducing the number of other offices that may be randomly selected for a compliance examination by one (1).**".

Page 19, line 33, after "subsection" insert ", **or as a result of a follow-up examination under this subsection,**".

Page 19, after line 33, after "examination" insert "**or follow-up examination**".

Page 20, reset in roman lines 10 through 24.

Page 31, after line 35, begin a new paragraph and insert:

"SECTION 11. IC 27-1-15.6-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2005]: **Sec. 35. (a) As used in this section, "securities commissioner" refers to the commissioner appointed by the secretary of state under IC 23-2-1-15.**

(b) The commissioner may conduct investigations, enforce actions, and take other official action that the commissioner considers appropriate to ensure compliance with IC 27-4-1-4(28) concerning the sale of variable annuity contracts. In acting under this section, the commissioner may consult with the securities commissioner and may use the resources of the securities commissioner in making a final determination of any issue concerning compliance with IC 27-4-1-4(28) concerning the sale of variable annuity contracts.

(c) If the securities commissioner is informed of a violation or suspected violation of IC 27-4-1-4(28) concerning the sale of variable annuity contracts or of the insurance laws and rules of the state, the securities commissioner shall timely advise the commissioner of the violation or suspected violation.

SECTION 12. IC 27-4-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.** The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the policyholder's insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public,

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in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or

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in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

- (i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
- (ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
- (iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in

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limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow

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credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of

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insurance. However, this subdivision shall not apply to any of the following:

- (A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.
- (B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.
- (C) Title insurance.
- (D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.
- (E) Insurance provided by or through motorists service clubs or associations.
- (F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:
 - (i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;
 - (ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;
 - (iii) insures against baggage loss during the flight to which the ticket relates; or
 - (iv) insures against a flight cancellation to which the ticket relates.
- (14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.
- (15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.
- (16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).
- (17) Between policy renewal dates, unilaterally canceling an

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individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) An insurance producer, or an insurer in any case in which a producer is not involved, recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions that are unsuitable, as defined by the department in an adopted rule, for the senior consumer on the basis of the facts disclosed by the senior consumer concerning the senior consumer's:

(A) investments and other insurance products; and

(B) financial situation and needs.

A recommendation of an insurance producer or an insurer is not an unfair method of competition or an unfair and deceptive act or practice under this section if the recommendation is made in compliance with the National Association of Securities Dealers Conduct Rules concerning suitability, as determined by the commissioner. As used in this section, "senior consumer" means an individual who is at least sixty-five (65) years of age. In the case of a joint purchase by more than one (1) party, the purchaser is considered a senior consumer if any of the parties is at least

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sixty-five (65) years of age."

and when so amended that said bill do pass.

(Reference is to HB 1660 as introduced.)

BURTON, Chair

Committee Vote: yeas 10, nays 0.

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